



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF HUMAN SERVICES
EUGENE I. GESSOW, DIRECTOR

February 13, 2009

GENERAL LETTER NO. 1-E-18

ISSUED BY: Bureau of Financial and Work Supports,
Division of Financial, Health and Work Supports

SUBJECT: Employees' Manual, Title 1, Chapter E, ***APPEALS AND HEARINGS***,
Contents (pages 1 and 2), revised; and pages 9 through 12 and 19 through 28,
revised.

Summary

This chapter is revised to:

- ◆ Remove references to the *Public Assistance Eligibility Report* (PAER), the *Food Assistance Interim Report* (FAIR), and the *Combined PAER/FAIR*. These forms are obsolete.
- ◆ Correct form numbers for the *Review/Recertification Eligibility Document* (RRED).
- ◆ Add a requirement to notify Disability Determination Service Bureau staff when the appeal issue is a determination made there.
- ◆ Expand the explanation of what information is needed in an appeal summary when the issue is overpayment recovery.
- ◆ Update language by replacing a reference to the "local office" with "Department" to reflect that forms will be considered received when returned to any Department of Human Services office, including the Income Maintenance Customer Service Center, central office, or a local office.

Effective Date

February 1, 2009

Material Superseded

Remove the following pages from Employees' Manual, Title 1, Chapter E, and destroy them:

<u>Page</u>	<u>Date</u>
Contents (p. 1)	May 11, 2005
Contents (p. 2)	October 28, 2005
9	January 26, 2007

10	December 2, 2003
11	January 26, 2007
12, 12a	May 11, 2007
19	October 28, 2005
20	March 27, 2001
21, 22	January 26, 2007
23	October 28, 2005
24, 25	December 2, 2003
26	May 18, 1999
27	May 11, 2007
28	May 18, 1999

Additional Information

Refer questions about this general letter to your area income maintenance administrator.

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- ◆ The person has been accepted for assistance in a new jurisdiction.
- ◆ The person provides a clear, written, signed statement that the person no longer wants assistance, or has given information that requires termination or reduction of assistance, and has indicated, in writing, that the person understands the consequence of supplying the information.
- ◆ The Department terminates or reduces benefits or makes changes based on a completed report form, specifically the *Review/Recertification Eligibility Document* (RRED), form 470-2881, 470-2881(S), 470-2881(M), or 470-4083(MS).
- ◆ The Department terminated benefits for failure to return a completed report form (RRED).
- ◆ The Department terminates a special allowance or service granted for a specific predetermined period, and the person was informed in writing at the time of initiation that the allowance or service will terminate at the end of the specified period.

Conference During the Timely Notice Period

Legal reference: 441 IAC 7.7(4)

During the timely notice period, the client may have a conference to discuss the Department's proposed action in the *Notice of Decision*. The Department must provide a full explanation of the reasons for the pending action and give the client an opportunity to offer facts to support the contention that the pending action is not warranted.

A representative, legal counsel, friend or other person may accompany the client. This person may represent the client when the client is not able to be present, unless otherwise specified by statute or federal regulation. (See [Representation](#).)

A client does not have to appeal a decision to request a conference to discuss the intended action of the Department. When the client requests the conference during the timely notice period, the Department must schedule a time to meet with the client to answer the client's concerns. Conferences held once an appeal is filed are covered at [Prehearing Conference](#).

Notice Not Required

Legal reference: 441 IAC 7.7(5), 7 CFR 273.13(b)

Notification is not required when:

- ◆ Services in the Social Service Block Grant Pre-Expenditure Report are changed from one plan year to the next, or the Plan is amended because funds are no longer available.
- ◆ Service has been time-limited in the Social Service Block Grant Pre-Expenditure Report, and as a result, the service is no longer available.
- ◆ The Department changes the placement of a person in foster care.
- ◆ Payment has been in accordance with the Medicaid payment schedule for the service billed (because there is no adverse action).
- ◆ It has been determined, based on reliable information, that the Food Assistance household has moved from the project area.

Reinstatement

Legal reference: 441 IAC 7.7(6), 40.2(5), 40.22(5), 65.19(13), 65.119(13)

Whenever a previously canceled case must remain canceled for a reason other than that covered by the original notice, send timely and adequate notice of the new cancellation, except as specified under [Dispensing With Timely Notice](#).

When a household has been reinstated for Food Assistance pending the outcome of an appeal and the decision upholds the Department, issue a timely and adequate *Notice of Decision* advising the household that its Food Assistance case is being canceled again based on the appeal decision.

Whenever a previously canceled case is eligible for reinstatement at a lower level of benefits for a reason other than that covered by the original notice, send timely and adequate notice of reinstatement, except as listed under [Dispensing With Timely Notice](#).

Reinstatement of a Food Assistance household can occur before the effective date of cancellation when:

- ◆ The reasons that caused the cancellation no longer exists, and
- ◆ Eligibility can be determined.

FIP assistance **must** be reinstated without a new application when all necessary information is provided before the effective date of cancellation and eligibility can be reestablished.

When eligibility factors are met, FIP assistance must be reinstated when the Department receives the completed *Review/Recertification Eligibility Document* (RRED), form 470-2881, 470-2881(S), 470-2881(M), or 470-4083(MS), within ten days of the date a cancellation notice is issued because the form was incomplete or not returned.

OPPORTUNITY FOR HEARING

Legal reference: 441 IAC 7.8(1), 7 CFR 273.15(h)

An appeal is an expression by the household or its representative that the household wishes to appeal a decision or desires an opportunity to present its case to a higher authority. No one shall limit or interfere with the freedom to request an appeal in any way.

When a person (or the person's authorized representative) expresses in writing dissatisfaction with any decision, action, or failure to act with reference to the case, the Department must determine whether the person wishes to appeal and receive an appeal hearing before an administrative law judge.

A request for a Food Assistance appeal may be expressed verbally or in writing. All other appeal requests must be in writing.

The following sections give more information:

- ◆ [Procedures for filing an appeal.](#)
- ◆ [The Department's right to deny or dismiss an appeal.](#)
- ◆ [Time limits for granting an appeal hearing.](#)
- ◆ [Withdrawing an appeal request.](#)

Filing an Appeal

Legal reference: 441 IAC 7.8(2), 7 CFR 273.15(h)

Encourage the appellant to make a written appeal on form 470-0487 or 470-0487(S), *Appeal and Request for Hearing*. Provide any instructions or assistance required in completing the form. However, use of this form is not required. If the appellant submits the written appeal on another paper, attach it to the appeal form.

The fact that an appellant is unwilling to complete or sign the appeal form does not preclude the right to file an appeal, as long as the appeal is in writing and has been communicated to the Department by the appellant or appellant's representative.

Exception: Food Assistance households may verbally request an appeal. If a client verbally requests a Food Assistance appeal, complete the form on behalf of the client.

Medicaid households may orally request an appeal to protect the filing date of the appeal. However, the oral request must be followed by a written appeal. The DHS Appeals Section will consider the oral request as the appellant's filing date for the appeal.

The office where the appeal is received must document the receipt date of all appeals, including the date the appeal was orally requested for Medicaid. Document the filing date by saving the envelope with the postmark and date-stamping the date received at any Department office. Attach the envelope to the appeal form and submit it to the DHS Appeals Section **within 24 hours of receipt**.

A written appeal is considered filed on the date postmarked on the envelope that is sent to the Department. For Medicaid, the appeal is considered filed on the date the appeal was orally requested. When the postmarked envelope is not available, a written appeal is filed on the date the appeal is date-stamped received by the Department.

Registration and Acknowledgment of Appeal

Legal reference: 441 IAC 7.10(1) and (2)

Upon receipt of an appeal, the DHS Appeals Section registers the appeal and sends an acknowledgment of receipt of the appeal to the appellant, representative, and all parties to the appeal, including the appropriate Department offices.

RESPONSIBILITIES OF DEPARTMENT'S REPRESENTATIVE

The worker or office that took the action being appealed or provided information on the client is responsible for representing the Department in the appeal process. This may include the PROMISE JOBS worker on a limited benefit plan, the child support recovery worker on a noncooperative FIP case, Iowa Medicaid Enterprise staff, the Iowa Plan contractor, or other contract staff.

Representing the Department involves:

- ◆ [Submitting the appeal request and summary of action to the Appeals Section and appellant.](#)
- ◆ [Coordinating with an attorney from the Attorney General's office when one is assigned.](#)
- ◆ [Conducting a prehearing conference, if the appellant requests it.](#)
- ◆ [Continuing assistance pending the final decision, if the appellant qualifies.](#)

The following sections explain these duties in more detail.

Submitting Information

Legal reference: 441 IAC 7.8(9), 7 CFR 273.15(i)(1)

Unless the appeal is voluntarily withdrawn, the Department worker or agent responsible for representing the Department at the hearing must complete the appropriate forms and send them to DHS Appeals Section at 1305 E. Walnut Street, 5th Floor, Des Moines Iowa 50319.

- ◆ Within one working day of receipt of the appeal, complete Part II of form 470-0487, *Appeal and Request for Hearing*, if the written appeal is not on the form, and attach a copy of the notice of decision on the adverse action being appealed.
- ◆ Within ten days of the receipt of the appeal, complete a summary and attach supporting documentation of the worker's factual basis for the action being appealed. See [Appeal Summary](#).
- ◆ Provide copies of all the materials sent to the DHS Appeals Section to the appellant and the appellant's representative at the same time.

The Appeals Section is not responsible for providing copies of the appeal summary to the appellant, the appellant's representative, or any other party to the appeal. The Department worker is responsible to ensure that all parties receive copies of the summary.

Notify the DHS Appeals Section if other agencies or staff are parties to the appeal.

Appeals staff will ensure that the other agencies are added to the appeal file to be notified of hearing dates and receive correspondence regarding the appeal. These may include:

- ◆ Department of Inspections and Appeals Investigations or Overpayment Recovery staff.
- ◆ Department of Iowa Workforce Development personnel.
- ◆ PROMISE JOBS workers.
- ◆ Quality Control staff.
- ◆ Disability Determination Service Bureau staff.

Also continue or reinstate benefits or services pending the appeal, if applicable. See

[Continuation of Assistance Pending Final Appeal Decision](#).

Appeal Summary

Your appeal summary should contain the following:

- ◆ Name of the appellant.
- ◆ Appeal number.
- ◆ Date of the appeal.
- ◆ Issue appealed.
- ◆ Detailed explanation of what happened leading to the appeal.
- ◆ Facts and policies regarding the Department's action.
- ◆ Citations to the Iowa Administrative Code and Employees' Manual.

Attach copies of all supporting documents. This may include specific notices, requests for information, caseworker notes, etc. Reference the supporting documents in the appeal summary.

The supporting documents will vary according to the issue of the case. Always include the application and authorization to represent if the appellant has authorized a representative. If the supporting documentation contains confidential information, such as the name of a child abuse reporter, de-identify this before providing the appellant a copy of the summary.

Appeals regarding overpayments require **all** information on how you calculated the overpayment. The appeal summary should include:

- ◆ Why the overpayment occurred.
- ◆ How you determined the start and end dates of the overpayment.
- ◆ What verification you used to determine an overpayment (pay stubs, proof of child support received or paid, proof of social security income, bank account statements, etc.).
- ◆ Calculation of the overpayment (Scratchpad screen prints or other detail work).
- ◆ Verification of months of eligibility or benefits, such as a copy of SSNI (Medicaid eligibility file) or ISSV (Issuance Verification system) screens.
- ◆ The amount of benefits issued (e.g., a copy of the ISSV screen).
- ◆ Any e-mail messages that may support or explain the overpayment decision.
- ◆ A copy of the completed *Overpayment Recovery Information Input*, form 470-0464. (This form compiles information but does not constitute **verification** of the amount or months of benefits issued. Those must be verified through other sources.)
- ◆ For medical overpayments, the client's medical history.
- ◆ For Medically Needy overpayments, the specific spenddown periods and the spenddown calculations.

Coordination With Attorney General's Office

In some situations, primarily child abuse and service appeals, an assistant attorney general will be assigned to act as the Department's attorney. In these situations, the acknowledgment letter will indicate in the "cc" section that the Attorney General's Office is involved. The Department worker is responsible for contacting the attorney and coordinating information for the appeal summary.

Continuation of Assistance Pending Final Appeal Decision

Legal reference: 441 IAC 7.9(1); 7 CFR 273.13(a)(1), 273.15(k)(1) and 273.15(k)(2)

Assistance shall not be reduced, restricted, discontinued, or terminated, nor shall a license or registration be revoked, or other proposed adverse action be taken pending a final decision on an appeal when:

- ◆ The appellant files an appeal within the timely notice period.
- ◆ The appellant files an appeal within ten days from the date adequate notice is issued for termination, reduction, or suspension of services, Food Assistance, Family Investment Program or Medicaid based on the completed monthly report.

If adequate notice is required, benefits may be continued if the appeal is filed within ten days of the date of the notice. When timely and adequate notice is required, benefits may be continued if the appeal is filed before the effective date of the notice.

Benefits continue if an appeal is based on a notice of cancellation only when a completed RRED has been submitted. If the notice period ends on a weekend or holiday, and the appellant files the day after the weekend or holiday, the request shall be considered to have been timely received. Benefits will continue.

To determine continuation of benefits, the date the appeal is filed is the date of the postmark or the date of receipt of the appeal, whichever is earlier.

If benefits are continued pending a final decision on the appeal, then the factor appealed must be held constant. During the appeal process, if a change is reported, act on that change, and issue a new notice of decision, if applicable.

Form 470-0487, *Appeal and Request for Hearing*, contains space for the appellant to request continued benefits or not. If the form does not positively indicate that the household has waived continuation of benefits, assume that continuation of benefits is desired and act accordingly.

When Assistance Does Not Continue

Legal reference: 441 IAC 7.9(2)

The adverse action appealed to reduce, restrict, discontinue, or terminate assistance, revoke a license or registration, or take other proposed action may be implemented pending a final decision on appeal when:

- ◆ An appeal is not filed within the timely notice period.
- ◆ The appellant does not request a hearing within ten days from the date adequate notice is issued based on the completed monthly report.
- ◆ A Food Assistance certification ends.
- ◆ A medically needy certification period ends.
- ◆ The appellant directs the worker in writing to proceed with the intended action.
- ◆ Medicaid benefits under a prior authorization are appealed and the prior authorization ends.

Do not reinstate benefits when an adequate (not timely) notice is appealed eleven or more days after the issuance date of the notice, or when an adequate and timely notice is appealed after the effective date of the notice.

Do not reinstate benefits when a *Notice of Cancellation* is appealed, or when an appeal is filed eleven or more days after the date of a *Notice of Decision* issued based on information reported on the completed RRED.

Do not reinstate or continue benefits when a certification period ends.

Recovery of Excess Assistance Paid Pending a Final Decision

Legal reference: 441 IAC 7.9(3), 7 CFR 273.15(k)(1)

Continued assistance is subject to recovery by the Department if the Department's action is affirmed in the final decision, except when the decision affirms a limited benefit plan that will be established with a new effective date.

When the Department's action is affirmed in the final decision, recover excess assistance paid pending a hearing decision back to the effective date of the original decision. No appeals will be heard over excess assistance paid pending a hearing decision that was not in the appellant's favor. However, appeals may be heard on the computation of excess assistance paid pending a hearing decision.

If the Department action is affirmed by the final decision, establish a claim against the appellant for all overissuances. (See [Final Decision](#) later in this chapter for instructions on implementing the final appeal decision.)

Recovery of Excess Assistance When Benefits Change Before a Final Decision

Legal reference: 441 IAC 7.9(3), 7 CFR 273.15(k)

Recover excess assistance paid when the appellant's benefits are changed because:

- ◆ A determination is made at the hearing that the sole issue is one of state or federal law or policy or change in state or federal law, and not one of incorrect grant computation, and the grant is adjusted.
- ◆ A change affecting the appellant's grant occurs while the hearing decision is pending and the appellant fails to request a hearing after notice of the change. Recover assistance paid from the date of change that affects the incorrect payment.

Prehearing Conference

Legal reference: 441 IAC 7.8(4), 7.8(5); 7 CFR 271.15(d)(1), 7 CFR 273.15(d)(2)

When desired by the appellant, schedule a prehearing conference with a representative of the office that took the action. The purpose of the prehearing conference is to:

- ◆ Provide information or explanations about the reasons for the intended adverse action.
- ◆ Answer questions.
- ◆ Provide an opportunity for the appellant to explain the appellant's action or position.
- ◆ Provide an opportunity for the appellant to examine the contents of the case record plus all documents and records the Department will use at the hearing, in accordance with public laws and fair information practice.

Note: The appellant does not need to request a prehearing conference to access records.

Observe the following procedures regarding the prehearing conference:

- ◆ Offer a prehearing conference to every appellant. If the appeal form is used, the offer is considered to have been made.
- ◆ Advise the appellant that use of a prehearing conference is optional and it in no way delays or replaces the hearing process.
- ◆ Schedule the conference as soon as possible after the appeal is filed. For households contesting a denial of Food Assistance emergency service, schedule the conference within two working days, unless the household requests that it be scheduled later or states that it does not wish to have a conference.

- ◆ The worker responsible for the action may attend the prehearing conference. However, the worker's supervisor shall attend the prehearing conference.
- ◆ Allow the appellant's representative to attend and participate in the conference unless precluded by federal rule or state statute.

Do not use the prehearing conference to discourage appellants from proceeding with their appeals. For further information on interference, refer to [RIGHTS OF APPELLANTS DURING HEARINGS](#).

The following sections explain procedures to follow when:

- ◆ [The applicant withdraws the appeal request at the conference.](#)
- ◆ [The conference is scheduled at the request of DIA.](#)

Withdrawal at Prehearing Conference

A prehearing conference may lead to an informal resolution of the dispute. However, a hearing will still be held unless the appellant makes a written withdrawal of the appeal or verbally instructs DHS Appeals Section or DIA Appeals Division to withdraw the appeal. Refer to [Withdrawal of Appeal Request](#) for more information.

When an attorney represents the appellant, confirm withdrawal with the attorney. A verbal or written request to withdraw an appeal from an appellant with an attorney of record is not necessarily invalid if made without the attorney's knowledge. However, it may be invalid if the attorney presents valid objection to the withdrawal.

When the Department discovers that it erred in the initial decision, immediately advise the appellant of the Department's willingness to rectify the error. When the appellant is willing to accept the Department's corrections of error and withdraws the appeal, make the correction immediately. Send a copy of the written withdrawal to the DHS Appeals Section.

When the Department corrects an error, notify the DHS Appeals Section. Either the appeal will be denied or a proposed decision will be issued dismissing the appeal as being resolved.

Prehearing Conference Scheduled by DIA

DIA may schedule a prehearing conference. This is a conference between all parties to the appeal to set and determine procedural issues, such as witnesses, dates of hearing, length of hearing, etc. The merits of an appeal will not be discussed at a prehearing conference scheduled by DIA.

DIA is responsible for notifying all parties to the appeal in writing when it schedules a prehearing conference. The Department worker is expected to be at the prehearing conference. If the Attorney General's Office is representing the Department, you may contact the attorney involved to determine if you need to attend the conference.

APPEALS PROCEDURES

The following sections describe the procedures used by the DHS Appeals Section and the DIA Appeals Division, including:

- ◆ [Granting a hearing.](#)
- ◆ [Scheduling a hearing.](#)
- ◆ [Determining the method of hearing.](#)
- ◆ [Determining the place of hearing.](#)
- ◆ [The role of the administrative law judge.](#)
- ◆ [Conduct of the hearing.](#)
- ◆ [Issuing subpoenas for witnesses or evidence.](#)
- ◆ [Obtaining a medical examination.](#)

Granting a Hearing

Legal reference: 441 IAC 7.10(3), 7 CFR 273.15(j)

The DHS Appeals Section determines whether an appellant may be granted a hearing and the issues to be discussed at the hearing, in accordance with applicable rules, state statutes, and federal regulations.

The appeals of those appellants who are granted a hearing are certified to the Department of Inspections and Appeals for the hearing to be conducted. The DHS Appeals Section indicates at the time of certification the issues to be discussed at the hearing.

Appellants whose appeals are denied hearings are notified by letter. Any appellant who disagrees with a denial of hearing may present additional information relative to the reason for denial and request reconsideration by the Department or a hearing over the denial.

The following sections address:

- ♦ [Expedited hearing](#).
- ♦ [Group hearings](#).

See also [Right of Department to Deny or Dismiss an Appeal](#) and [Time Limit for Granting an Appeal Hearing](#)

Expedited Hearings

Legal reference: 7 CFR 273.15(i)(2), 42 CFR 438.408, 438.410, and 432.244

The DHS Appeals Section will expedite Food Assistance appeal requests from households that plan to move from the project area, such as migrant farm workers. Appeal requests from these households are processed faster than others to enable them to receive a decision and a restoration of benefits, if the decision so indicates, before they leave the area.

The local office is responsible for notifying the DHS Appeals Section that an expedited hearing is needed.

Appeals are also expedited for Emergency Assistance households. Appeals may be expedited for managed care decisions when it can be determined that a member's life, health or ability to attain, maintain, or regain maximum function could be in jeopardy if the regular appeals process were to take place. Either the appellant or a provider who is acting on the appellant's behalf may request an expedited hearing.

Group Hearings

Legal reference: 441 IAC 7.5(3), 7 CFR 273.15(e)

The DHS Appeals Section may respond to a series of individual requests for a hearing by requesting that the Department of Inspections and Appeals conduct a single group hearing in cases in which the sole issue is one of state or federal law or policy or changes in state or federal law. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

In all group hearings, the policies governing individual hearings shall be followed. Each individual household shall be permitted to present its own case or have its case presented by a representative.

Scheduling the Hearing

Legal reference: 441 IAC 7.10(4), 7.10(7); 7 CFR 273.15(l)

The Department of Inspections and Appeals establishes the date, time, method, and place of the hearing for the records certified for hearing by the DHS Appeals Section.

In appeals certified for hearing, the Department of Inspections and Appeals sends a notice to the appellant at least ten calendar days in advance of the hearing date. The notice states:

- ◆ The date, time, method, and place of the hearing.
- ◆ The name of the administrative law judge.
- ◆ The issues to be discussed at the hearing.
- ◆ Whom to contact with questions about the hearing date or issues.
- ◆ The rights of the appellant to:
 - Present any evidence orally or through documents to establish pertinent facts.
 - Question or refute any testimony.
 - Bring witnesses of the appellant's choice and may be represented by others, including an attorney, subject to federal statute or law.

If the hearing is conducted by telephone, the notice will carry instructions on teleconference calls and where the appellant is to appear to be connected.

DIA will send a copy of this notice to all the parties to the appeal, as certified by the DHS Appeals Section. The *Notice of Hearing* is delivered by first class mail except for fraud cases, where certified mail is used.

Workers are responsible for notifying judges in advance of telephone numbers at which they can be reached to participate in the hearing.